

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
NEW DELHI

O.A.No.304 OF 2019

M. Haridasan ... Applicant in the O.A.

Versus

State of Kerala & Ors. ... Respondents in the O.A.

AND

IN THE MATTER OF:-

M.A.No.80 OF 2021

Poabs Granites (Pvt.) Ltd. & Anr.
Applicants/Respondents

OBJECTIONS FILED BY POABS GRANITES PVT. LTD. AGAINST
THE REPORT DATED 28.02.2023

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ADVOCATE FOR THE RESPONDENTS: MR.E.M.S.ANAM

VISHNU SHANKAR

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Chamber No.56,

Supreme Court of India,

New Delhi – 110 001,

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M.A.No.80 OF 2021

1. Poabs Granites (Pvt.) Ltd.
Kuthirakulam P.O., Vellanand,
Thiruvanthapuram District,
Kerala State,
Represented by its Managing Director
2. Poabs Rock Products (Pvt.) Ltd.
Nellikaparambu P.O., - 673 602
Mukkom, Kozhikode, Kerala State
Represented by its Managing Director

.....Applicants in this I.A./Respondent

1. The above O.A. was registered on the basis of a copy of a PIL letter sent by the Applicant.
2. This respondent was impleaded in the O.A.No.304 of 2019 by order dated 09.12.2021 in Mis. Application No.80 of 2021. This respondent has also filed Misc. Application No.81 of 2021 in the said O.A.No.304 of 2019, on 08.11.2021 seeking directions and raising contentions

in the matter, consequent to the Order and directions of the Hon'ble Supreme Court dated 25.10.2021, in several Civil Appeals in which this respondent was a party.

3. By order dated 09.12.2021, this Hon'ble Tribunal was pleased to constitute a committee, who after scientific study, submitted a Report dated 28.02.2023 to this Hon'ble Tribunal. This respondent begs to submit the following objections to the said Report for the kind consideration of this Hon'ble Tribunal, before passing any order on the basis of the said Report in O.A.No.304 of 2019.

Objections of this Respondent, Poabs Granites (P) Ltd. against the Report dated 28.02.2023 of the Joint Committee constituted by Hon'ble National Green Tribunal in O.A.304 of 2019

1. The Joint Committee has failed to comply with the direction of this Hon'ble Tribunal vide order dated 09.12.2023 and the committee has not studied the impact of blasting in different soil strata/earth profile. The Committee conducted the blasting study only in 9 quarries situated in 9 districts of the State of Kerala. The committee has omitted to conduct blasting study in Kannur, Malappuram, Kozhikode and Thrissur, which are the districts in State of Kerala, where majority of the Quarries are functioning. As per records there are more than 650 quarries in the State of Kerala and having different soil strata/earth profile, terrain and geological formation/disturbances. The implementation of the recommendations arrived out of the blasting study conducted in 9

quarries out of the 650 quarry in Kerala is illegal, incomplete and highly unreliable. The 9 quarries are not representative of other hundreds of quarries in Kerala and in other States. Since any order passed by this Hon'ble National Tribunal will be applicable to all the States in our Country, any study on quarries shall be nationally based. Even if the study ordered by this Hon'ble Tribunal is confined to the State of Kerala, the report of the Committee is not representative because out of about 650 quarries in Kerala, only nine have been inspected and the Committee has omitted to make any study in other Districts completely constituting about 1/3 of the total land area of the State. This defeats the very purpose of the study.

2. The Hon'ble NGT vide its order dated 09.12.2021 had stated as follows:

"The study will include the impact caused by vibrations on different soil strata/earth profile in the area and on noise and air levels, on building and human and wildlife".

The area mentioned by the Hon'ble NGT is the whole of State of Kerala having a total land area of 38,863 sq.km. The Joint Committee had failed to conduct in four districts having a land area of 11.898 sq.km, where majority of granite quarries function. The Joint Committee, in order to study the impact of blasting in quarries having different soil strata/earth profile, terrain and geological formation/disturbances, should at least have conducted blasting study in three quarries in each district. The recommendation of distance criteria by conducting study in just nine quarries in a State

is not a reasonable method of fixation of a criteria to be implemented throughout the territory of India. Therefore the report of the Joint Committee is arbitrary, unreasonable unreliable and illegal since the report lacks findings of blast study in different areas and the report does not provide any impression on the impact of the blasting study in different soil strata/ earth profile.

3. The Committee itself admit the fact that the impact of blasting in different area depend on the nature and characteristics of each land.

As per the report at page 13, the Committee had stated that:

“The vibration level at a distance depends on charge per delay, vibration frequency, rock characteristics (type, unit weight, layering, slope of layers), blast hole conditions, presence of water, propagation of surface and body waves in the ground, and to a lesser extent on method of initiation. Hence, it is important to select study locations in areas having distinct geological/tectonic attributes as it affects propagation of vibration. Thus the blast induced vibration studies need to be carried out in locations with distinct geotechnical profiles.”

Even though the committee had pointed out the importance of selecting more sites of different geotechnical profiles, they had miserably failed to select various locations for conducting the blast study. Expert study was conducted only at 9 stone quarries each in 3 zones which is the northern, central, and southern zones of Kerala as mentioned in the report. There is no such authorized distinct geographical Zones made by any authority regarding different soil strata / Earth profile. The selection of site and limiting it to nine quarries was arbitrary and illegal.

4. The committee in its blasting study has monitored Peak Particle Velocity (PPV) caused by the blasting. The committee itself in its report has stated that "*Peak Particle Velocity (PPV) is generally a good index of damage to structure due to vibration.*"

It is stated in the report itself that maximum permissible value of PPV in blasting more than 25 hertz is 15 mm/s for domestic houses/ structures. This standard was fixed as per Technical Circular No. 7 of 1997 issued by the DGMS, which is the standard approved and published by Government of India after several field studies, which is an approved National Standard. (Please see the table in page 33 of report). Not even in one blasting trial conducted by the Committee, PPV was excess than the permissible value of 15mm/s. As per the standards fixed by DGMS, the maximum safe value for historically important or sensitive structures is 10mm/sec and whereas all structures near the mines, where the studies were conducted falls in the category of domestic houses/structures, the category in which the permissible value is up to 15mm/s as earlier mentioned. The number of holes and total explosive charges where increased as a result of the human response received by the Joint committee, where some of the people claimed to live near vicinity of Quarries exaggerated without any basis like damage to building or injury to humans etc., that the normal practice of blasting by the mine management had a bigger size (higher intensity) than the blasting conducted on the experimental day. Therefore, the

experiments where designed to study the influence even under the worst scenario. The committee had in fact conducted blasting study in the peak level and even then the values of PPV were within the desirable limit. The Expert Committee itself in its report had stated that the value of vibration in all the blasting trials where within the safe levels as per DGMS ground vibration standards.

5. However, the committee without authority, considering the human response at different Quarries Fixed PPV Value of 5 mm/s as the safe level. The honorable NGT may be pleased to notice that the Joint Committee has no authority to modify a standard fixed by the Government after a detailed study. The standard fixed by the Govt. of India is final and conclusive and it cannot be overlooked, on the basis of purely biased vocal opinion of a few individuals. The Committee without any authority or material has altered the vibration value fixed by the DGMS, Govt. of India. The fixation of vibration value on the basis of human response rather than ignoring the national standard fixed by the government is illegal. The committee conducting blasting study at the peak level (as the was the case scenario) to evaluate the impact of blasting, considering the Human response may be considered; is not conclusive. But the committee has no authority to consider human response as the basis of fixing vibration value ignoring the vibration value officially fixed by the Govt of India. The report erroneously determines the

permissible limit of PPV and modified and fixed to 5mm/sec on the basis of the human response, which is against the standards and the committee has no power to alter the national standard fixed by the DGMS and it is illegal and perverse.

6. Moreover, there is no approved national standard for human response index. Human response is an emotional factor as per perception to any activity or circumstances by individuals and this perception will vary from person to person and this cannot be standardized. Hence the substantial reduction of the permissible PPV limit from 15 mm/sec. to 5mm/sec. is against the officially recognized standard and therefore illegal and also not logical. The recommendation to fix the distance from blasting zone as 150 meters after limiting the vibration value to 5 mm/s is in the circumstances vitiated by illegality and is arbitrary and unreasonable, it is respectfully submitted.
7. The online survey regarding stone quarries in Kerala conducted by the Joint Committee was open for public response by online from 09-08-2022 to 26-08-2022 and a total of 6734 responses were recorded. Out of the total responses (6734) received, 65.3 % of the participants were living near stone quarries. But 74.7% of the responses indicated that they have no grievances related to stone quarries. Hence, this fact that majority of the public had no grievance

against stone quarries has not been considered in the final recommendation of the Joint Committee while increasing the existing statutory safety distance from 50M to 150M arbitrarily. When the recommendation is opposed to the statutory rule in force in Kerala, the Committee should have given cogent evidence, technical details and reasons. This has not been done by the Committee.

8. It is of paramount importance to note that the other impacts of blasting which is the Air Over Pressure and Fly Rock are safe within the distance of 50 meters in all the blasting study conducted by the Committee. Observation in the report made on fly rocks is that out of 91 blasting rounds, in only 2 cases there were fly rocks which was again limited up to 25 M, which is well within the existing safe distance of 50 M statutorily fixed after a detailed study. The Air Over Pressure (AOP) values reported are also well within the permissible standards approved by Government of India. In the report itself the committee has stated that as per CPCB standard AOP is permissible to 140 dB and as per standards of United States Bureau of Mines it is 134 dB. The recorded AOP in the study conducted by the Committee are within the permissible limit. The recommendation arrived by the committee by adopting precautionary principle rather than not relying on the values arrived by the committee during the blasting study is not admissible. The Joint Committee was supposed

to assess general impacts of granite quarrying on the environment and habitation in its neighborhood and suggest recommendation for distance criteria as per the outcome of the study. Unfortunately, the Joint committee while suggesting recommendations has not considered the fact that the outcome of all the blasting trials were well within the permissible value; but instead relied on Human response which is illegal and not acceptable for several reasons.

9. As per the report it is the impact of the Noise which is considered as the main factor in suggesting 150 meters as safe for blasting. By virtue of the order notified by the Central Government under Noise Pollution (Regulation and Control) Rules 2000, published in Gazette of India, Extraordinary, Part II – Section 3(ii) vide SO 123(C) dated 14.02.2000, the mining activity falls in the category of Industrial Area and the permissible day time noise level is 75 db(A). As per the rule any increase in ambient noise by 10 dB(A) shall only be deemed as violation. Hence the noise level in a quarry operation needs to be limited within 85 dB(A) for safety. It may be noted that as per the study report at page 36 it is mentioned that maximum noise recorded during operation in 50m was 74.49 dB(A) at Palakkad, in 100m was 75.05 dB(A) at Kollam and in 200m was 64.24 dB(A) at Pathantmthitta. Referring to the same statement, 50m is in close proximity to the mining operations. The Committee has failed to consider the said values while suggesting the final recommendations which is illegal and arbitrary and unreasonable.

10. It is relevant that, as a property of sound, the magnitude of sound decreases with distance, unless there is any amplifier used. Hence the value of Noise recorded at greater distances than 50metres cannot be more than value recorded within 50 meters. The perusal of the value of Noise in the report will reflect that, the value of Noise had increased in greater distance which is evidently incorrect. Even a lay man knows that the frequency of sound is reduced by distance. Apparent error has occurred in the method or procedures adopted by the committee to evaluate Noise impact.
11. The recorded value at 50m distance is again well within the permissible limits as per Indian Standards. The same report also mentions the likelihood of influence from the roads, traffic and public places contributing to the overall ambient noise in few locations which are far away from the site of mining operations. Therefore, it may be considered that the safe noise level does not exceed beyond 50m distance from the mining location. Unlike the PPV and AOP monitoring equipment the readings from noise level monitoring equipment are manually recorded on sheets. Hence chances of human errors are high, which may also be taken into account. In the circumstance it is submitted that the procedure adopted and study conducted by the joint committee has apparent errors and it is not acceptable. It is to be rejected; it is respectfully submitted.
12. The findings of the Committee with regard to the impact of Dust is not the result of a proper procedure. It is important to note that the

report itself mention that the accepted practice of dust monitoring is recording it on 24 hours average basis. But in the study conducted by the Committee the time duration was reduced to 12 hours average. This is a deviation from the prescribed procedure of ambient air quality analysis. When the time is reduced by half, the value of intensity gets doubled. The committee has failed to consider this standard and the recommendation to the contrary to the notified standard is liable to be rejected.

13. On detailed analysis of the report, it is found that the highest PM 2.5 value recorded at 50m was $82.73\mu\text{g}/\text{m}^3$ (See page 38 of report). But on the table of values plotted in the page 1092 of report indicates that the maximum PM 2.5 value is just $62.10\mu\text{g}/\text{m}^3$. Whereas, the permissible value of National Ambient Air Quality Standard mentioned in Schedule VII framed under Rule 3(3B) of The Environment Protection Rule is $60\mu\text{g}/\text{m}^3$. The committee had made errors in recording value in the report and the committee has failed to consider that there was only a slight rise in the value of Dust which can be reduced by modern techniques. Moreover, the Committee in its report failed to give the reasoning to suggest the distance to 150 meters as safe for blasting, when even in 50 meters the value of dust was perfectly the desirable level.
14. The final recommendation of the joint committee fixing 150 meters as distance criteria for safe blasting is illegal and against the findings of the blast study conducted by the committee. The PPV and AOP

values are within the permissible limit within 50 meters. The fly rock ejections were less than 25 meters the particulate matter emissions (dust) were only up to 100 meters and the assessment of noise beyond 100 meters were influenced by extraneous noise from other sources which was also admitted by the committee. The committee, ignoring all these values, and the norms prescribed by the Govt., has now recommended 150 meters as safe blasting distance criteria without considering the fact that within 50 meters itself all the parameters were within the permissible limit. The Report is therefore liable to be set aside.

15. The Report is full of factual errors and it is not reliable, which is evident on perusal of page 1069 of Report as an instance. The blasting study pertaining to M/s Cochin Blue Metal quarry unit is listed. However, under clause 1.1 General Information, the information provided is that of Ms Parackal Granites, which is another unit where blast study was conducted. The same information given under Ms Parackal Granites is copied here. Hence, the general information pertaining to Ms Cochin Blue Metal quarry unit is missing. Such factual errors caused by non-application of mind and the manner of preparation of the report, have vitiated the Report, apart from over ruling the prescribed standards made by study under the Govt. of India.
16. The joint committee has recommended procedures and methods for safe blasting within 50 to 100 meters but erroneously evaded from

fixing distance criteria implementing such procedures and methods within such distance and has recommended arbitrary distance without any material on record.

17. The joint committee has omitted to consider the findings in their study conducted within 100 meters and erroneously recommended 150 meters as safe distance for blasting. The recommendation of the joint committee to maintain 150 meters in the periphery/ Boundary of the quarry lease area is not reasonable admissible. The joint committee had failed to consider the aspect that radial distance of 150 meter from the blasting zone in the periphery of the quarry lease will lead to wastage of minerals and land. The Committee has not given importance to the optimization of minerals; rather the suggestion of the committee will only lead to wastage of national wealth in minerals and therefore the recommendation of the committee is illogical and bad in law and will defeat the National Policy on mining minerals. Further, the Committee failed to study the Non-blasting methods and other scientific methods which suits for the optimization of Minerals.
18. The committee failed to consider the fact that when radial distance of 150 meters from blasting zone is maintained as recommended by the Committee, even in an ideal square plot having a lease area of 15 acres (the maximum extent of land holdings under the Kerala land Reforms Act) no mining can be done.

19. The distance criteria for safe blasting is site specific. It can be fixed considering the nature and other factors of each Quarrying site. Fixing a general Distance criteria is not proper and it will lead to wastage of land and minerals. Mining is an engineering subject which can be safely done by implementing scientific methods. The methods by which safe blasting can be done within 50 to 100 meters are laid down in the report Submitted by the committee but the committee had failed to provide the recommendation as per their findings and on the basis of the methods mentioned by them in the report therefore the recommendations of the committee regarding 150 meter is not reasonable or rational and is opposed to the National Policy on Mining of Minerals.
20. As far as this respondent is concerned the values arrived in the blasting study conducted by the joint committee in their site is within the permissible limit even within 50 metres from the blasting area. This Hon'ble Tribunal may be pleased to appreciate that this respondent is managing 5 other quarry in Kerala, where also the blasting is carried out in the same manner as that of this respondent and is carrying out works on a professional and scientific manner. There was no negative human response or comments before the Committee against the quarry of this respondent in the public opinion conducted during the study. It is to be noted that if the joint committee conduct a blasting study in this respondent's other sites also, the impact will be within the permissible limit. This respondent

has carried out studies by NIRM, NIT and CIMFR institutes in different sites on several occasions and the report those studies will reflect the scientific approach to the Mining Industry and this respondent and its allied quarries are submitting 6 months compliance report to MoEF. Therefore, fixing distance criteria of 150 metres in general and making it applicable on the basis of the recommendation of the joint committee in this respondent quarry where all the values arrived in 50 metres were within permissible limit is bad in law and discriminatory. Other reports made by eminent body of experts in the filed in respect of this respondent quarry are already on record which may be relied by this respondent.

21. Moreover, it is pertinent to note that this respondent had submitted before the honourable NGT a report of CSIR-CIMFR. On perusal of the said report, it is understood that the values of the study conducted in all the sites of the respondent are same as that of the values arrived in the present study conducted in compliance of the order of the Hon'ble NGT. It is the same organization which have conducted study in this respondent quarry. The said organization had recommended 50 meters as safe distance for blasting in the earlier study report which is already on record. The Joint Committee has failed to consider the earlier report they have prepared and had arbitrarily fixed 150 meters as safe distance which is not admissible in law.

22. This respondent is already conducting blasting as per the mandates recommended by the committee in the report and is further ready to implement the scientific methods as recommended by this authority and is ready to submit an undertaking on the same. At present times there are other scientific systems and methods to control, contain or limit the spread of dust particle at the source itself and also there are scientifically designed and proved online ambient air quality equipment's to regularly monitor the air quality and for real time reporting. Project proponent may be allowed to implement suggestions and conditions put forward by the enforcement authority within a specified time frame.
23. In the said circumstances, the report filed by the Joint Committee is liable to be set aside.
24. The report filed by the Joint Committee is not maintainable either in law or in facts. The final recommendations of the report is illegal and contrary to the findings of the blast study and the procedure adopted by the Joint Committee evaluating Noise and Dust impact of the blasting trials are not correct or legal. Several apparent errors have occurred in the study and therefore the report is unreliable and erroneous and its final recommendations are to be rejected it is respectfully submitted.

Filed 1450

E.M.S. Anam

(E.M.S. ANAM)

Advocate for the Respondents in the O.A.

Place: New Delhi
Dated: 13.04.2023

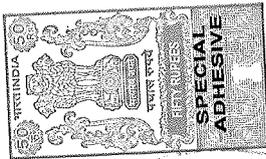
For Poabs Granites Pvt. Ltd.

[Signature]
Managing Director



Signature of Managing Director of
Poabs Granite Pvt. Ltd. is hereby
attested by me at my office
at Thiruvalla, Kerala on this the
13th day of April 2023.

13-4-23



SUNIL JACOB M.A., LL.B, D.S.S.
ADVOCATE & NOTARY
Enroll No. K/000093/1983
Thiruvalla, Pathanamthitta Dist.
Kerala State, India - 689 101

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**NEW DELHI****M.A.No.80 OF 2021****IN****O.A.No.304 of 2019****IN THE MATTER OF:-**

M. Haridasan

...Applicant in the O.A.

Versus

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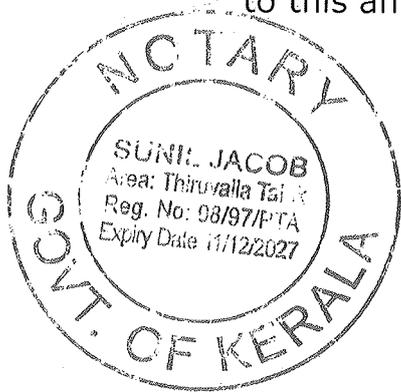
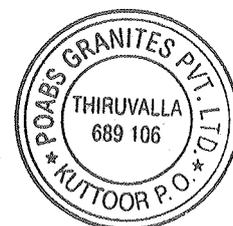
AFFIDAVIT

I, Aby Mathew, S/o.P.A.Mathew, aged 60 years, Managing Director, Poabs Granites (Pvt) Ltd., Kuthirakulam P.O., Vellanad, Thiruvananthapuram District, residing at Palliambil House, Nellimala P.O., Thiruvalla – 689 542, Kerala State do hereby solemnly affirm and state as under:-

1. I am the applicant in the aforesaid M.A.No.80 of 2021. That I am conversant with the facts of the case and am competent to swear to this affidavit.

For Poabs Granites Pvt. Ltd.

Managing Director



SUNIL JACOB M.A., LL.B, D.S.S.
ADVOCATE & NOTARY
Enroll No. K/000093/1983
Thiruvalla, Pathanamthitta Dist.
Kerala State, India - 689 101

2. That I have read and understood the contents of the accompanying objection and state that the facts stated in the objection are true to my knowledge and belief.

All the facts above stated are true and correct to the best of my knowledge and belief.



For Poabs Granites Pvt. Ltd.
[Signature]
Managing Director
DEPONENT

VERIFICATION:

I, the above named deponent, do hereby verify that the contents of the above affidavit para 1 to 2 are true and correct. No part of it is false and nothing material has been concealed there from.

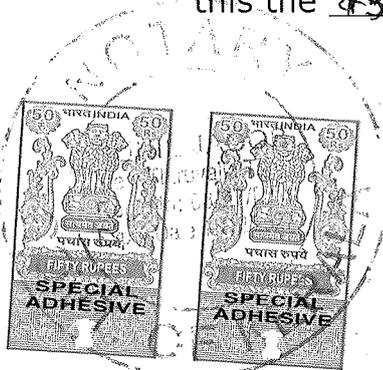
Verified at THIRUVALLA on this the 13th day of April, 2023.



For Poabs Granites Pvt. Ltd.
[Signature]
Managing Director
DEPONENT

Solemnly affirmed and signed before me by the deponent on this the 13th day of April, 2023 in my office at THIRUVALLA.

[Signature]
13-4-2023



ADVOCATE
SUNIL JACOB M.A., LL.B., D.S.S.
ADVOCATE & NOTARY
Enroll No. K/000093/1983
Thiruvalla, Pathanamthitta Dist.
Kerala State, India - 689 101